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1/19/95

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

H-7J

JAN 19 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Precision Chrome, Inc.
c/o James T. Harrington, Esquire
Ross & Hardies
150 North Michigan Avenue
Chicago, Illinois 60601-7567

Re: David Chemical Site, 4650 W. Fifth Avenue,
Chicago, Illinois

Dear Mr. Harrington:

Enclosed please find an executed copy of the Administrative Order by Consent issued for this site pursuant to Sections 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9606 and 9622. Thank you for your cooperation in this matter.

If you have any questions regarding this Order, please contact Brett Warning, Assistant Regional Counsel, at (312) 886-6733 or Peter Guria, On-Scene Coordinator, at (312) 353-1909.

Sincerely yours

William E. Muno
for William E. Muno, Director
Waste Management Division

Enclosure

cc: Gary King, Illinois Environmental Protection Agency



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JAN 18 1995

REPLY TO THE ATTENTION OF:

MEMORANDUM

SUBJECT: Proposed Administrative Order by Consent Pursuant to CERCLA Section 106 for the David Chemical Site, Chicago, Illinois

FROM: Brett Warning BW
Assistant Regional Counsel

TO: William E. Muno, Director
Waste Management Division

You will notice that the enclosed proposed Administrative Order by Consent includes, in Section VII, "Reimbursement of Costs," a requirement for the provision of oversight costs, but does not include a requirement for the payment of past and future response costs. That section is drafted as such for the following reasons. First, the most imminent threat at the site is chromic acid in liquid and solid form. The enclosed order requires removal of the chromic acid from the site, thereby addressing the most pressing concern. Also, the respondent to the order has made an ability to pay argument for cleanup of the entire site, and additional cost reimbursement provisions will require extensive negotiations.

The enforcement team plans to enter into negotiations with the respondent regarding cleanup of the remainder of the contamination at the site, as well as reimbursement of all costs incurred by the Agency at the site, including past costs and oversight costs. Negotiation of these provisions would be documented in another administrative order by consent. This has been communicated to counsel for the respondent and counsel for the respondent has agreed to this approach. Approaching the contamination at this site with two orders allows for a quick disposal of the contamination which is causing the immediate threat at the site, and then for the Agency to seek to negotiate a favorable administrative order by consent to address the remaining contamination, and reimbursement of the remaining outstanding costs, at the site.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:

David Chemical Site
4650 W. 5th Avenue
Chicago, Illinois 60622

Respondent:

Precision Chrome, Inc.

Docket No. **V-W- '95-G-279**

ADMINISTRATIVE ORDER BY
CONSENT PURSUANT TO
Section 106 OF THE
COMPREHENSIVE
ENVIRONMENTAL RESPONSE,
COMPENSATION, AND
LIABILITY ACT OF 1980,
as amended, 42 U.S.C.
§ 9606(a)

I. JURISDICTION AND GENERAL PROVISIONS

This Order is entered voluntarily by the United States Environmental Protection Agency ("EPA") and the Respondent. The Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Waste Management Division, Region V, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

This Order provides for performance of removal actions and reimbursement of oversight costs incurred by the United States in connection with property located at 4650 West Fifth Avenue, Chicago, Illinois (the "David Chemical Site" or the "Site"). This Order requires the Respondent to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

A copy of this Order will also be provided to the State of Illinois, which has been notified of the issuance of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

The Respondent's participation in this Order shall not constitute an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. The Respondent agrees to comply with and be bound by the terms of this Order. The Respondent further agrees that it will not contest the basis or validity of this Order or its terms.

II. PARTIES BOUND

This Order applies to and is binding upon EPA, and upon the Respondent and the Respondent's heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of the Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter the Respondent's responsibilities under this Order. The Respondent is jointly and severally liable for carrying out all activities required by this Order.

The Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Order. The Respondent shall be responsible for any noncompliance with this Order.

III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, EPA hereby finds that:

1. The David Chemical Site ("Site") was purportedly an active chemical manufacturing and storage facility located at 4650 Fifth Avenue, Chicago, Cook County, Illinois. The Site is located in a mixed residential/commercial area with Fifth Avenue defining the Site's southern boundary. A railroad yard is located to the south across Fifth Avenue. The Site is bordered to the west by Kilpatrick Avenue, to the north by G.F. Structure Company, and to the east by Joe's Drums Company. A privately owned metal machining company is located to the west across Kilpatrick Avenue. An easement directly adjacent to the north side of the Site separates David Chemical Company and the G.F. Structure Company. The G.F. Structure Company also utilizes a fenced area adjacent to the west side of the David Chemical Site for the storage of aluminum barricade material. A residential neighborhood is located approximately one block northwest of the Site on Arthington Street, and Sumner Elementary School is located three blocks to the northeast of the Site. The Site consists of one parcel described as:

Lots 19 and 22, both inclusive, in Butler Lowry's West 48th Street Addition, being a subdivision of Parts of Blocks 9 and 10 in Purrington and Scranton's Subdivision of the West half of the South West quarter of Section 15, Township 39 North, Range 13, East of the Third Principal Meridian, lying North of Barry Point Road, in Cook County, Illinois.

2. The David Chemical Site is currently owned by Ivery J. Johnson. According to Ivery Johnson, site operations began in 1987 and included the manufacturing of cleaning agents and detergents for sale and distribution to plating facilities,

automatic car wash operators and portable toilet companies. David Chemical Company utilized sodium bisulfate, proprietary chromic acid, chlorinated compounds (mostly water), and industrial dyes and perfumes in the cleaning agent manufacturing process. The proprietary chromic acid was obtained from Precision Chrome, Inc., an electroplating facility located in Fox Lake, Illinois. The cleaning agent manufacturing process was discontinued in 1993; however, David Chemical continued to manufacture detergents on-site until September 1993. Phosphates, bleach, and sodium nitrate are utilized in the detergent manufacturing process. Fluoroboric acid is also reportedly used to adjust the pH of the products.

3. On April 8, 1993, personnel from the Chicago Fire Department (CFD), Chicago Department of Environment (CDE), and the Metropolitan Water Reclamation District (MWRD) responded to a release of an unknown liquid from the Site. An orange substance was observed migrating from under a garage door facing Fifth Avenue and a green liquid was seen running along the curb side of the street toward the sewer. Ivery Johnson stated that the roof of the building leaked and that fiber drums containing barium sulfate and trisodium phosphate were damaged by rain water and had released the material. The fire department's Hazardous Materials (HAZMAT) Team cordoned off the affected area of the street and advised Ivery Johnson of proper cleanup procedures. The HAZMAT Team then entered the building and observed numerous drums containing surfactants and phosphates.
4. On July 15, 1993, an environmental contractor for the Illinois Environmental Protection Agency (IEPA) conducted a Resource Conservation and Recovery Act (RCRA) inspection of the Precision Chrome facility located in Fox Lake, Illinois. The inspector was informed by Precision Chrome representatives that the David Chemical Company picked up and transported the facility's spent chrome plating solution to the David Chemical Site. When contacted by the IEPA contractor, a David Chemical representative stated that nitric and sulfuric acid are added to the spent solution to raise the chrome level for use as iridescent chromate in cadmium plating.
5. On August 18, 1993, the IEPA, accompanied by the Illinois State Police Department (ISP), conducted a sampling and inspection at the David Chemical Site. There was no representative of David Chemical present and the Site appeared to be closed. Numerous 55-gallon drums were observed outside a bay door at the southeast corner of the building. A green colored liquid was observed migrating from the bay door to the sidewalk. The bay door was partially open; however, a locked steel security gate prevented entry. Several drums and small containers could be seen inside the building along with trash and debris. IEPA personnel collected two samples of the green

liquid and soil from the sidewalk area. Analytical results of these samples revealed a Toxicity Characteristic Leachate Procedure (TCLP) chromium level of 831 parts per million (ppm).

6. On September 4, 1993, personnel from the IEPA, ISP, and MWRD executed a search warrant at the David Chemical Site for the purpose of collecting samples and conducting an inspection for possible RCRA violations. A representative of the David Chemical Company was present to facilitate access to drums and containers located inside the building. A total of four drum and two floor samples were collected for laboratory analysis. Drums and containers were found to be stored in a haphazard fashion. Some appeared to be laying on their sides and in various stages of deterioration. Laboratory results of drum and floor samples indicated TCLP levels of chromium ranging between 330 and 4,082 milligrams per liter (mg/l), and TCLP levels of lead between 26 and 85 mg/l.
7. On March 28, 1994, a Cook County Grand Jury indicted Ivery Johnson on the following charges: 1) one count of reckless disposal of hazardous waste, a State of Illinois class 4 felony; and, 2) one count of unauthorized use of hazardous waste, a State of Illinois class 4 felony.
8. On May 27, 1994, the U.S. EPA Emergency and Enforcement Response Branch (EERB) conducted a Site assessment of the David Chemical Site to evaluate threats posed to human health and the environment. The U.S. EPA On-Scene Coordinator (OSC) and Technical Assistance Team (TAT) conducted air monitoring and collected solid and liquid samples from drums, small containers, and material from the floor of the Site. Approximately 300 55-gallon drums were observed throughout the Site, many open and in various stages of deterioration, stacked two and three rows high upon pallets. Labels on some of the drums indicated acids, caustics, and flammable compounds. An unknown number of small containers (five gallons or less) and bagged materials were also found throughout the Site in various states of deterioration. The roof of the building was observed to be in extremely poor condition, with large gaping holes above areas containing drums and paper bags of material.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, EPA has determined that:

1. The David Chemical Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2. Chromium is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

3. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4. The Respondent Precision Chrome, Inc. is a person who generated hazardous substances found at the David Chemical Site. The Respondent therefore may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR § 300.415(b)(2). These factors include, but are not limited to, the following:

a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; this factor is present at the Site due to the existence of corrosive and toxic liquids and solids found in drums and small containers. Label information on drums found on site indicate the presence of strong acids such as: chromic, fluoroboric, acetic, and hydrofluoric acids; as well as caustic sodium hydroxide. Drums containing flammable liquids, glycol ether and mineral spirits were also found at the Site. Analytical results of the facility have revealed Toxicity Characteristic Leachate Procedure (TCLP) chromium levels ranging from 330 to 276,000 ppm and TCLP lead levels ranging from 26 to 86 ppm. Elevated levels of volatile organic compounds such as methylene chloride (12,200 ppm), 1,1,1-trichloroethane (265 ppm), and toluene (165 ppm) are also present.

The high concentrations of the above materials exhibit the characteristics of corrosivity and toxicity of hazardous wastes under RCRA, 40 CFR 261.22, and 40 CFR 261.24, and are hazardous substances under section 101(14) of CERCLA. Chromic acid is a human carcinogen that can be absorbed through all routes of exposure, resulting in severe nose and throat irritation and stomach or kidney ailments. Contact with strong acids can result in severe skin or eye burns, and irritation to the nose, throat and respiratory tract. Volatile organic materials pose inhalation, ingestion, and direct contact hazards which can result in irritation to the respiratory tract, eyes, and skin. The facility owner has

stated that trespass and vandalism regularly occurs through the roof of the building. The corrosive and toxic nature of the acid, caustic liquids, and solids present direct contact, ingestion, and inhalation threats to public health should unauthorized access continue. The site is bordered by commercial businesses and private residences to the northwest.

b. hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release; this factor is present at the Site due to the existence of drums and small containers of acid, caustic, and toxic liquids and solids. Approximately 700 drums and small containers have been identified throughout the facility, many open and in various states of deterioration. Drums have been stacked two and three high in an overcrowded portion of the building. Label information indicates corrosive and flammable liquids and/or solid material. Field sampling of some of the drums has indicated pH values ranging from <1.0 to 10.

The severely deteriorated and vandalized roof has numerous large holes, resulting in continued exposure to natural elements. One hole, approximately twenty feet by twenty feet in size, is situated directly above drums containing mineral spirits and hydrofluoric acid. On one occasion rainwater entering the facility through the roof caused several fiber drums to become damaged and release material. The drummed material combined with chromic acid sludge to contain the release from the facility. Analytical results of a sample collected by the IEPA from the material which had migrated to Fifth Avenue revealed TCLP chromium above 4,000 ppm. During the U.S. EPA site assessment, air monitoring conducted inside the building documented elevated levels of VOCs in the breathing zone, indicating the potential for a continued release of material from the facility. The present state of the facility's roof increases the potential for a release of material from the drums.

c. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; this factor is present at the Site due to the continued vandalism and deterioration of the building's roof. Open drums containing acids, caustics, and flammable materials have been documented on Site. If the building's roof is allowed to remain in its present condition, continued exposure of the drums and containers to the natural elements could accelerate deterioration and release their contents. On one occasion personnel from the Chicago Fire Department and the Metropolitan Water Reclamation District have responded to the Site to contain a release of chromic acid sludge which had migrated to the city sewer system. Additionally, deterioration of the drums and containers could result in

mixing and migration of incompatible materials such as chromic acid, sodium hydroxide, calcium hypochlorite, and other volatile organic compounds.

d. threat of fire or explosion; this factor is present at the Site due to the existence of drums and small containers of flammable liquids. Analytical results of samples collected from drums revealed liquids with a flashpoint of 115°F, exhibiting the characteristic of ignitability under RCRA 40 CFR 261.21. Several five gallon containers labelled as flammable isopropyl alcohol have also been observed at the facility. The Site is not in continuous operation and vandalism is common. Should unauthorized access to the building continue, the potential for arson remains high.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP or CERCLA.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, it is hereby ordered and agreed that Respondent shall comply with the following provisions, including but not limited to all documents attached to or incorporated into this Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

The Respondent shall perform the removal actions required by this Order, or retain a contractor to implement the removal actions. The Respondent shall notify EPA of the Respondent's qualifications or the name and qualifications of such contractors, whichever is applicable, within five (5) business days of the effective date of this Order. The Respondent shall also notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least five (5) business days prior to commencement of such work. EPA retains the right to disapprove of the Respondent or any of the contractors and/or subcontractors retained by the Respondent. If EPA disapproves a selected contractor, the Respondent shall retain a different contractor within two (2) business days following EPA's disapproval and shall notify EPA of that contractor's name and qualifications within three (3) business days of EPA's disapproval.

Within five (5) business days after the effective date of this Order, the Respondent shall designate a Project Coordinator who

shall be responsible for administration of all the Respondent's actions required by the Order. The Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If EPA disapproves a selected Project Coordinator, the Respondent shall retain a different Project Coordinator within three (3) business days following EPA's disapproval and shall notify EPA of that person's name and qualifications within four (4) business days of EPA's disapproval. Receipt by the Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by the Respondent.

The EPA has designated Peter Guria of the Emergency Response Branch, Region 5, as its On-Scene Coordinator (OSC). The Respondent shall direct all submissions required by this Order to the OSC at: U.S. Environmental Protection Agency, 77 West Jackson Boulevard, HSE-5J, Chicago, Illinois 60604, by certified or express mail. The Respondent shall also send a copy of all submissions to Brett Warning, Assistant Regional Counsel, 77 West Jackson Boulevard, CS-29A, Chicago, Illinois, 60604. The Respondent is encouraged to make its submissions to EPA on recycled paper (which includes significant postconsumer waste paper content where possible) and using two-sided copies.

EPA and the Respondent shall have the right, subject to the immediately preceding paragraph, to change their designated OSC or Project Coordinator. EPA shall notify the Respondent, and the Respondent shall notify EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

2. Work to Be Performed

The Respondent shall perform, at a minimum, the following removal actions:

- a. Engage an appropriate state and federally licensed transportation company to load and transport all consolidated chromic acid liquid and all drummed chromic acid solids for disposal; and,
- b. Transport and dispose of all liquid and solid chromic acid wastes at a RCRA/CERCLA-approved disposal facility in accordance with the U.S. EPA Off-Site Rule, 58 F.R. 49200, effective October 22, 1993.

2.1 Work Plan and Implementation

Within five (5) business days after the effective date of this Order, the Respondent shall submit to EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order.

EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, the Respondent shall submit a revised draft Work Plan within five (5) business days of receipt of EPA's notification of required revisions. If EPA disapproves the revised draft Work Plan, the Respondent shall be deemed in violation of this Order. The Respondent shall implement the Work Plan as finally approved in writing by EPA within seven (7) calendar days after EPA's approval. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. The Respondent shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA approved work plan.

The Respondent shall not commence or undertake any removal actions at the Site without prior EPA approval.

2.2 Health and Safety Plan

If applicable, within five (5) business days after the effective date of this Order, the Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. If EPA determines it is appropriate, the plan shall also include contingency planning. The Respondent shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

2.3 Quality Assurance and Sampling

If applicable, all sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. The Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with EPA guidance.

Upon request by EPA, the Respondent shall have such a laboratory analyze samples submitted by EPA for quality assurance monitoring. The Respondent shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. The Respondent shall

also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by EPA, the Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by the Respondent or their contractors or agents while performing work under this Order. The Respondent shall notify EPA not less than three (3) business days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

2.4 Post-Removal Site Control

In accordance with the Work Plan schedule, or as otherwise directed by the OSC, the Respondent shall submit a proposal for post-removal site control, consistent with Section 300.415(k) of the NCP, 40 CFR § 300.415(k), and OSWER Directive 9360.2-02. Upon EPA approval, the Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

2.5 Reporting

The Respondent shall submit a monthly written progress report to EPA concerning actions undertaken pursuant to this Order, beginning thirty (30) calendar days after the date of EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

If Respondent owns any portion of the Site, it shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice of the proposed conveyance to EPA and the State. The notice to EPA and the State shall include the name and address of the transferee. The Respondent shall require that the transferee will provide access as described in Section V.3 (Access to Property and Information).

2.6 Final Report

Within sixty (60) calendar days after completion of all removal actions required under this Order, the Respondent shall submit for EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP, 40 CFR § 300.165. The final report shall also include a good faith

estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed off-site or handled on-site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

3. Access to Property and Information

The Respondent shall provide or obtain access to the Site and off-site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Illinois representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. The Respondent shall submit to EPA, upon request, the results of all sampling or tests and all other data generated by the Respondent or its contractors, or on the Respondent's behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than the Respondent, the Respondent shall use its best efforts to obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. The Respondent shall immediately notify EPA if, after using its best efforts, it is unable to obtain such agreements. The Respondent shall describe in writing its efforts to obtain access. EPA may then assist the Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. The Respondent shall reimburse EPA for all costs and attorneys fees incurred by the United States in obtaining such access.

4. Record Retention, Documentation, Availability of Information

The Respondent shall preserve all documents and information

relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, the Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, the Respondent shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of EPA.

5. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with the EPA Revised Off-Site Rule, 40 CFR § 300.440, 58 Federal Register 49215 (Sept. 22, 1993).

6. Compliance With Other Laws

The Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e), 42 U.S.C. § 9621(e), and 40 CFR § 300.415(i). In accordance with 40 CFR § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment caused or threatened by the release. The Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region V at (312) 353-2318, of the incident or Site conditions. If the Respondent fails to respond, EPA may respond to the release or endangerment and reserves the right to recover costs associated with that response.

The Respondent shall submit a written report to EPA within seven (7) business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any

release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The Respondent shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

VI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by EPA or the Respondent at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

VII. REIMBURSEMENT OF COSTS

EPA will send the Respondent a bill for 'oversight costs' on an annual basis. "Oversight costs" are all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this AOC, and in monitoring and enforcing compliance with this AOC.

The Respondent shall, within thirty (30) calendar days of receipt of a bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

Respondent shall simultaneously transmit a copy of the check to the Director, Waste Management Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - David Chemical Site" and shall reference the payor's name and address, the EPA site identification number (XG), and the docket number of this Order.

In the event that any payment is not made within the deadlines described above, Respondent shall pay interest on the unpaid balance. Interest is established at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest shall begin to accrue on the date of the Respondent's receipt of the bill. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the

United States by virtue of Respondent's failure to make timely payments under this Section.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the OSC. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

VIII. DISPUTE RESOLUTION

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondent objects to any EPA action taken pursuant to this Order, including billings for oversight costs, the Respondent shall notify EPA in writing of its objections within 10 calendar days of such action, unless the objections have been informally resolved. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting the Respondent's position, and all supporting documentation on which such party relies. EPA shall submit its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by EPA. The time periods for exchange of written documents relating to disputes over billings for oversight costs may be extended at the sole discretion of EPA.

An administrative record of any dispute under this Section shall be maintained by EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding paragraph. Upon review of the administrative record, the Director of the Waste Management Division, EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Order.

The Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, the Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XIV. FORCE MAJEURE

The Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of the Respondent or of any entity controlled by the Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite the Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

The Respondent shall notify EPA orally within twenty-four (24) hours after the Respondent becomes aware of any event that Respondent contends constitutes a force majeure, and in writing within seven (7) calendar days after the event. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. The Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this Section shall be grounds for EPA to deny the Respondent an extension of time for performance. The Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

) If EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter the Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

X. STIPULATED AND STATUTORY PENALTIES

For each day, or portion thereof, that Respondent fails to fully perform any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondent shall be liable as follows:

- a. For every calendar day of delay in submitting any documents required by this Consent Order (such as the Work Plan, Work Plan revisions, monthly reports, and the final report) and the name of the Respondent's contractor and Project Coordinator: \$750 per day for days 1 to 15; and \$1,500 for every day thereafter;

- b. For the late submission of the check for oversight costs: \$500 per day for days 1 to 15; \$1,000 for every day thereafter;
- c. For failure to comply with any other provisions of this Consent Order, including failure to comply with any other deadline contained in this Order or the Work Plan, after notice by U.S. EPA of noncompliance: \$2,000 per day for days 1 to 15; and \$2,500 for every day thereafter.

Upon receipt of written demand by EPA, the Respondent shall make payment to EPA within 20 days and interest shall accrue on late payments.

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified the Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way the Respondent's obligations to complete the performance of the work required under this Order. Stipulated penalties shall accrue, but need not be paid, during any dispute resolution period concerning the particular penalties at issue. If the Respondent prevails upon resolution, the Respondent shall pay only such penalties as the resolution requires.

Violation of any provision of this Order may subject the Respondent to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). The Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should the Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

XI. RESERVATION OF RIGHTS

Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or

any other applicable law.

XII. OTHER CLAIMS

By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be a party or be held out as a party to any contract entered into by the Respondent or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order.

Except as expressly provided in Section XIII (Covenant Not To Sue), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent waives any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.

No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIII. COVENANT NOT TO SUE

Except as otherwise specifically provided in this Order, upon issuance of the EPA notice referred to in Section XVII (Notice of Completion), EPA covenants not to sue the Respondent for judicial imposition of damages or civil penalties or to take administrative action against the Respondent for any failure to perform removal actions agreed to in this Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against the Respondent under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for recovery of oversight costs incurred by the United States in connection with this removal action or this Order.

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order. These covenants not to sue extend only to the

Respondent and do not extend to any other person.

XIV. CONTRIBUTION PROTECTION

With regard to claims for contribution against the Respondent for matters addressed in this Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4).

Nothing in this Order precludes Parties from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XV. INDEMNIFICATION

) The Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of the Respondent and the Respondent's officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between (any one or more of) the Respondent, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. Nothing in this Order, however, requires indemnification by the Respondent for any claim or cause of action against the United States based on negligent action taken solely and directly by EPA (not including oversight or approval of plans or activities of the Respondent).

XVI. MODIFICATIONS

) Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within seven (7) business days; however, the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

If the Respondent seeks permission to deviate from any approved plan or schedule, the Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligation to obtain such formal approval as may be required by

this Order, and to comply with all requirements of this Order unless it is formally modified.

XVII. NOTICE OF COMPLETION

When EPA determines, after EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention, payment of costs), EPA will provide notice to the Respondent. If EPA determines that any removal activities have not been completed in accordance with this Order, EPA will notify the Respondent, provide a list of the deficiencies, and require that the Respondent modify the Work Plan if appropriate to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

XVIII. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that the Respondent has sufficient cause not to comply with one or more provisions of this Order, the Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XIX. EFFECTIVE DATE

This Order shall be effective upon signature by the Director, Waste Management Division, EPA Region 5.

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

Agreed this 10th day of January, 1995.

By

Ronald J. Hutton President
Precision Chrome Inc.

IT IS SO ORDERED AND AGREED

BY:

William E. Muno
William E. Muno, Director
Waste Management Division
United States
Environmental Protection Agency
Region 5

DATE:

1/19/95